



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 13, 1951

Hon. Larry O. Cox
Executive Director
Board for Texas State
Hospitals and Special Schools
Austin, Texas

Opinion No. V-1190.

Re: Authority of the Board
for Texas State Hospi-
tals and Special Schools
to create and establish
a new psychiatric hos-
pital.

Dear Mr. Cox:

Your request for an opinion is as follows:

"We desire the opinion of your office regarding the legality of the construction of a new institution by expenditure of funds provided by Section 3 of Article 7047c-1 (V.C.S.).

"Section 8 of House Bill 1, Regular Session of the 51st Legislature, 1949, indicates that the Board for Texas State Hospitals and Special Schools may create and establish new institutions for the care and maintenance of wards under its jurisdiction.

"It is the interpretation of several of the Board members of the Board for Texas State Hospitals and Special Schools that this Board is authorized to create and establish new institutions by virtue of Section 8 of the afore-mentioned House Bill No. 1. It is their belief that the funds provided in Article 7047c-1, Section 3, can be used to construct such new institutions. These members feel that the State of Texas and this Board are in great need of a new psychiatric hospital, which will provide the latest type of treatment for mental illness.

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"There is a question in some of the Board members' minds whether or not the Board has the authority to create and establish new institutions; therefore, your opinion is necessary on account of the difference of opinion.

"Please advise whether or not Section 8 of House Bill 1, 51st Regular Session, 1949, and Section 3 of Article 7047c-1 give this Board authority to create and establish new institutions for the care of the mentally ill."

House Bill 1, Acts 51st Leg., R.S. 1949, ch. 316, p. 588, referred to as Article 3174b, V.C.S., created the Board for Texas State Hospitals and Special Schools. Section 2 of the act gives to the Board management and control of State Hospitals and Special Schools. Section 8 thereof provides in part:

"The Board for Texas State Hospitals and Special Schools is hereby authorized to negotiate for and to acquire from the United States Government, or any agency thereof, or from any source whatsoever, by gift, purchase, or leasehold, for and on behalf of the State of Texas, for use in the State service, and in the establishment of State tuberculosis sanatoriums, any lands, buildings, and facilities within the State of Texas, and any personal properties wherever located, and to take title thereto for and in the name of the State of Texas."

Section 3 of Article 7047c-1, V.C.S., provides, in part:

". . . From the effective date of this Act, one-fourth ($1/4$) of the net revenue derived from the tax levied on cigarettes weighing not more than three (3) pounds per thousand, and five-forty-firsts ($5/41$) of the net revenue derived from the tax levied on cigarettes weighing more than three (3) pounds per thousand, shall be credited to a special fund to be known as the State Hospitals and Special Schools Building Fund,

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which is hereby created; Provided however, that not in excess of Five Million Dollars (\$5,000,000) shall be credited to the State Hospitals and Special Schools Building Fund for the biennium ending August 31, 1951 and not in excess of Five Million Dollars (\$5,000,000) for each fiscal year thereafter shall be credited to such fund. Any balance in excess of such Five Million Dollars (\$5,000,000) in any fiscal year shall be transferred to and become a part of the State Hospital Fund hereby created, which is and shall be the same State Hospital Fund as provided for in House Bill No. 3 of the First Called Session of the Fifty-first Legislature.

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"All funds credited to the State Hospitals and Special Schools Building Fund under this Act are hereby appropriated to the Board for Texas State Hospitals and Special Schools for the purpose of constructing, repairing and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed or to be committed to such hospitals and special schools according to law."

The State Hospitals and Special Schools Building Fund was created for the purpose of constructing, repairing, and equipping such buildings as in the opinion of the Board are necessary to the proper care of those committed to such hospitals and special schools according to law. The statute is silent as to any authority relating to the creation and establishment of a new institution with moneys from this fund. It is our opinion that the acts in question relate solely to those institutions within the jurisdiction of the Board for Texas State Hospitals and Special Schools. Specific acts of the Legislature have authorized the creation and establishment of institutions within the jurisdiction of the Board for Texas State Hospitals and Special Schools. An examination of the acts in question reveals that specific authorization has been deemed necessary in the past. (See Chapters 1, 2 and 3, Title 51, V.C.S.) In the absence of such authority, it is our opinion that a new institution may not be established.

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Public officers and governmental and administrative boards possess only such powers as are expressly conferred upon them by law or are necessarily implied from the powers so conferred. Bryan v. Sundberg, 5 Tex. 418, 425 (1849); Fort Worth Cavalry Club v. Sheppard, 125 Tex. 339, 83 S.W.2d 660 (1935); Crosthwait v. State, 135 Tex. 119, 138 S.W.2d 1060 (1940).

Therefore, in answer to your question, it is our opinion that neither Section 8 of House Bill No. 1, supra, nor Article 7047c-1 furnishes the board sufficient authority to create and establish a new institution.

SUMMARY

Section 8 of House Bill No. 1, Acts 51st Leg., R.S. 1949, ch.316, p.588, and Section 3 of Article 7047c-1, V.C.S. are not sufficiently broad in scope to authorize the Board for Texas State Hospitals and Special Schools to create and establish new institutions.

APPROVED:

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BW:mw

Yours very truly,

PRICE DANIEL
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